were partly because it would have been impossible to find a sovereign who had not in some way exhibited bias in favor either of the North or South during our civil war, and partly because the questions involved in the controversy, relating as they did to those principles of international law which affect the rights and duties of neutrals, were of too great importance to the civilized world to entrust the decision of them to any one man. For the determination of such great questions an international tribunal composed of leading jurists, selected largely and, if possible, entirely, from different neutral countries, is better adapted than any other system which has hitherto been devised, and, as Mr. BALCH very justly observes on page 17 of his pamphlet, "we may reasonably expect that through such tribunals, through their proceedings and decisions, and not through empirical codes, we may ultimately arrive at some more tangible and better ordered system of international law; one to which the assent of civilized peoples may be given, greatly to the benefit of mankind."

R. D.

COMMENTS ON RECENT DECISIONS.

THE MECHANICS' LIEN LAW OF PENNSYLVANIA.

IN the year 1890 it was assumed, as the ground of the judgments in Schroder *v.* Galland, 134 Penna., 277, and Benedict *v.* Hood, *Id.*, 289, that the basis of a lien on a building for work or materials furnished was the contract of the owner of the land on which it stands. There was there applied the ordinary rule that all persons dealing with an agent must ascertain the extent of his authority, and if he has stipulated there should be no lien, no one furnishing the labor or materials can have one.

The legislation of 1891, P. L., page 225, has changed this, and few, if any, of the Bar have ever questioned the validity of this Act, but the reporter of the Supreme Court has seen fit to do so in a foot-note, 146 Pa., 120. It may then, therefore, possibly be worth while to recall to the recollection of those concerned some matters which have been overlooked or forgotten. It will be found that the legislation of 1891 simply restores the law as it was established by a series of decisions for half a century. And these have escaped observation probably because they have one and all been omitted from the book on which the profession relies in such matters. Mr. Wharton printed them; Mr. Brightley's book superseded Wharton, and he drops them out without explanation or a word of caution that I am aware of; not one is cited by counsel or referred to by the Court. I mean the rule of the Mechanics' Lien Law.

To make this matter clear, it is, perhaps, necessary to state the legislation on the subject which preceded the Act under which we had lived for fifty-four years, during which time it is quite certain that no one had

ever suggested that the owner of the land could, by any such contrivance as that which was resorted to in the case that has been mentioned, prevent any one who furnished materials or labor from obtaining a lien on the ground and building, if the building was erected at *his instance and he was in possession.*

It is useless to spend time over the Act of 1803. We begin with the Act of 1806. This was the first Act which has any real bearing on the subject. And without referring to it and to the judicial exposition of its meaning, we are quite likely to get a very incorrect notion of the meaning of the Act of 1836, and of the modification of that Act by the Act of 1840.

The Act of 1806 (4 Smith, 4) provided that all buildings (it was originally local, but was largely extended) shall be subject to the payment of debts contracted for, or by reason of work done or materials found or provided by any person employed in furnishing materials for, or in the erecting or constructing such building before any other lien which originated subsequent to the commencement of the building. It then limited the lien as to time, unless there was an action. The supplemental Act of 1808 gave a right to sue in *personam* or in *rem* by *scire facias.*

Attention is called to the absence of all reference to the owner of either building or land, so far as his intervention or consent to the putting up of the building was concerned, or to the contracting the debt for the work or materials, or authorizing this contract. It is not to the present purpose whether there is not enough in the Act to have authorized the construction that the owner of the land must have authorized the contracting of the debts. It is rather difficult to deny this, looking at the remedy given by the supplement of 1808, 4 Sm., 528, which was alternate or optional against the owner in person, or against the building; on the other hand, the restriction of the remedy to the *res* may be said to point the other way.

The justification for the construction put on the Act by the Court by GIBSON, C. J., in O'Connor *v.* Warner, 4 W. & S., 223, evidently shows that there was great surprise and evident dissatisfaction at this construction, and this was so strong that the legislation had then interfered. However this may be, whatever may be said for the differing opinions, or rather, views of the bar, the legislature or the Court, it is not open to dispute that the meaning of this Act was settled; and this was that the lien was imposed without any reference to the action on inaction of the owner of the land. It was not necessary that he should have consented to the erection of the building; he may even have been incapable of contracting for such a thing, yet his land was bound.

The decisions, it cannot be disputed, established this, and they are justified in the elaborate judgment in O'Connor *v.* Warner, that leaves no room for doubt of the meaning or the intention of the Court. In Savoy *v.* Jones, 2 Rawle, 243, the estate of a remainderman under a settlement was held to pass by a sale under a lien for bricks furnished the equitable tenant for life, GIBSON, C. J., saying that by the Act the land was pledged irrespective of ownership. In Baker *v.* Jones, 9 W., 9, a purchaser, by a verbal contract, contracted a debt in building, and the legal title was held to be bound by the lien. In Anchutz *v.* McClelland, 5 W.,

487, a lessee for years was the person who put up the building; the title of a trustee for the separate use of the wife of the lessor was held bound. In Bickel *v.* Jones, 7 W., 9, the estate of a vendor was held bound by a lien for a building contracted for by the vendee. A sentence of GIBSON, C. J., is deserving notice; it is this—by the Act the *legislature hypothecated* buildings for debts contracted in their construction. It is impossible to exclude all intervention of the owner more absolutely. In Holdship *v.* Abercrombie, 9 W., 52, the same decision was made as in Anchutz *v.* McClelland, 5 W., 487, and on the same title.

Savoy *v.* Jones, the first of these cases, was decided in January, 1830, and the next legislation was the Act of the 16th of June, 1836. All the other cases were decided after the passage of that Act, though all relate to the older Act. But the interpretation of the Act of 1806 had been known for years, and this new Act was prepared by a commission. No one could pretend haste or inadvertence in drafting it. By it every building erected was made subject to a lien for the payment of all debts contracted for work done or materials furnished for or about the erection or construction of the same. It will be observed there is not a word that even by implication requires the building to be erected with the consent of the owner nor his assent to the contract by which the debt was created. Beside this, the remedy was so changed as to eliminate all grounds for argument that it was understood or implied that he should have even consented to the erection of the building. It was confined to the building, and *a reputed* owner was made a sufficient party. Of course the right of action on the contract existed. Then came the five decisions as to the effect and intention of the old Act.

By this time there was evidently a disturbance in the public mind. If we look at the decisions the inferior Courts were hard to restrain; at all events, it is evident that the community were not at all prepared to admit a novelty such as this into their system. The remedy is amusing if one can shut his eyes to the cruelty of inviting a mechanic to invest his property on the faith of the legislative grant expounded by the Court, and then deprive him of it, for the new Act left no room for debate as to its meaning and intent, nor could there be any debate as to its legality after six decisions of the Supreme Court. Accordingly, on the 28th of April, 1840, P. L., 474, the legislature enacted that the lien given by the Act of 1836 shall not be construed to extend to any other or greater estate than that of the person in possession at the time of commencing the building, and at whose instance the same was erected, and no other estate shall be sold under any execution authorized by the Act.

It is not at all necessary, nor will it serve any good purpose to further comment on this mode of dealing with the unfortunate people who had purchased a right under the Act of 1836, by selling or furnishing materials or labor. It is sufficient to say that the great Chief Justice proved himself equal to the occasion. In 1839 a lease was made of a lot and the lessee put up a building, and, in doing so, contracted a debt for which a claim was filed, and under this the lot was sold, and all this occurred before the Act of 1840 was passed.

The landlord then sued for his rent accrued since the sale. It was

by the Court admitted that the object of the Act of 1836 was the same as that of 1806, that the revisors prepared it, knowing the construction of the former Act, and not intending to change it; and while denying the power of the legislature to change the meaning of a Statute, if that had been declared by the Court, yet as there had been no exposition of *this* statute, the judiciary were bound to accept the exposition of the legislature, because it was susceptible of such an explanation. Singular casuistry.

Two things seem to have been overlooked; that on the previous page of this judgment it is admitted that the Act does not mean what the legislature says it shall be said to mean, and that it was not the intention of the draftsman to give this meaning, but, on the contrary, to adopt a statute in conformity to the construction of the old one. I have pointed out how much clearer the intention is in the later than in the earlier one. The other point overlooked is that there had been a judgment and it was unreversed, and it was in *rem*, and at the time of the sale it bound the *res*. The value of this judgment lies in the fact that there is the most elaborate justification of the judgments that I have cited, and most pointedly that the Act did certainly mean to subject the land to debt contracted in building, irrespective of the wishes, intention or consent of the owner.

Now, it is of the utmost importance to consider the Act of 1840, the evil to be remedied, the mode of doing this, and the language selected for the purpose. The evil was the imposition of a lien for the cost of a building not authorized to be erected by the owner of the land. The mode of correcting this was by limiting the lien to the estates of the owner, who, being in possession, did authorize the building. And the language used excludes the property of owners who merely assent to such erection, or who even compel the erection, by confining it to the estate of the owners at whose instance the building is erected, and who are *in possession* at the commencement of the building. Thus, grantors on ground rent and mortgages, who have stipulated for a building are excluded. But it should be noticed that the assent to the contract or to the furnishing materials is not required by the new Act any more than by the old, if the party in possession authorizes the building or does anything that makes it to be erected *at his instance*, for the lien is imposed not by the owner, but by the legislature. Nor can anyone dispute it is quite enough if the owner has it in his option to make a lien possible by refusing to consent to a building. He cannot be bound if a tenant or anyone puts it up. It is always in his power, when he consents to a building being put up, to protect himself not from the right to a lien, but from the fact of a lien existing in any injurious form, even when he is the person at whose instance it is erected.

It never was intended that the owner of the land by restricting the right of his builder or contractor could exclude the lien. A moment's reflection would have shown that the statute was a mere trap for the unwary if this were so. And that as soon as such a rule was promulgated, there never would be a chance for a lien to exist. No one but the unlearned in the tricks of the trade would ever voluntarily fail to exclude the right of lien.

As to the power of the legislature to give such a lien, it would hardly be worthy of discussion, even if it had not been six times decided. It is true, the point was ruled *sub silentio*, but then decisions thus made are of more weight than many that are the deductions of what passes for logic. No more powerful exponent of Constitutional law can be set up than common consent where the circumstances have suggested a dispute.

R. C. McM.

WHEN, if ever, we have provided for us a new edition of "Reid's Reference Index," or whenever a new book of a similar character and purpose is published, I trust there may be a change in the method. In May, 1889, the Supreme Court established a rule that "Pennsylvania cases decided since the commencement of the State Reports must be cited by the volume of said State Reports." The name of the reporter is eliminated, and the practice of the Court is to cite "124 Pa. 170."

In Ried, published in 1891, we have the cumbrous "P. S. R." in large capitals, and the leading case is followed by references to "Smith" and "Jones," and other reporters by name. Nor do we find any chronology in the book. To give a single instance of that seems to me to be serious, if not fatal fault in the book, will illustrate what I mean.

"Johnson v. Currin, 10 P. S. R., 498. [Qualified in 6 C.; not perfectly sound, 5 Sm.; contrary to the general current of authority, 1 Penn'r, 119]. Executory Devise, grand-children, 24 Sm., 420. As to 'the intention always governing,' 6 C., 165; 5 Sm., 490; Limitations over, 4 Wri., 23."

The changes I would note as coming within the scope, convenience and necessity of the case, are these, and such as these:

"Johnson v. Currin, 10 Pa. 498 (1849.) [Qualified in 30 Pa., 165 (1858); not perfectly sound, 55 Pa. 490 (1867); Contrary to the general current of authority, 1 Penn'r, 119 (1881)]. Executory Devise, grand-children, 74 Pa., 420 (1874). As to the intention always governing, 30 Pa., 165 (1858); 74 Pa., 490 (1874). Limitations over, 40 Pa., 23 (1861).

Thus we have the history and chronology of the point, and a uniform system of rotation and reference. Ried is a great improvement upon Lynn and Landis, and he is entitled to credit for the special matters to which he calls attention. But with Lynn, Landis and Wright before him something more might have been expected. Wright is open to some, if not all of the objections made to Reid, but then Wright is nearly ten years old, and reporting, digesting and indexing have improved since Wharton and Wright began. A well-made paper book gives the date of the case quoted, and is often of importance. I do not know that enclosing the year in parenthesis is necessary or proper. That may be for the printers.

BLOOMSBURG, PA. J. G. F.